Docket No.: 30550/38856A
(PATENT)

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

**Peter J. Malnekoff**

Application No.: 09/871,867

Filed: June 1, 2001

For: AN AUTOMATED GEMSTONE
EVALUATION SYSTEM

Confirmation No.: 2171

Art Unit: 3622

Examiner: Retta, Yehdega

## APPEAL BRIEF

MS Appeal Brief–Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is submitted in furtherance of the Notice of Appeal, filed in this case on February 14, 2006. On August 28, 2006, a Notification of Non-Compliant Appeal Brief was mailed to the Applicant. The responding Appeal Brief is filed within the one-month deadline. Accordingly, this Appeal Brief is timely filed.

This brief contains items under the following headings as required by 37 C.F.R. §41.37 and M.P.E.P. §1206:

## I.       Real Party In Interest

The real party in interest is Peter J. Malnekoff, the inventor of the above-identified patent application.

## II.      Related Appeals and Interferences

There are no related appeals or interferences.

## III.     Status of Claims

### A.       History

The application was originally filed with claims 1–19. Claim 19 was canceled and claims 20–22 were added by amendment. A Pre-Appeal Brief Request For Review was filed on February 14, 2006 and a Notice of Panel Decision From Pre-Appeal Brief Review was mailed on March 29, 2006. The Decision indicated that the application remained under appeal because there was at least one actual issue for appeal.

### B.       Current Status of Claims

1.       Claims canceled:  19
2.       Claims withdrawn from consideration but not canceled:  None
3.       Claims pending:  1–18 and 20-22
4.       Claims allowed:  None
5.       Claims rejected:  1–18 and 20-22

C.    **Claims On Appeal**

The claims on appeal are claims 1–18 and 20-22.

IV.    **Status of Amendments**

Applicants filed an amendment on June 13, 2005 in response to a non-final Office action mailed January 11, 2005. The amendment was entered, as indicated by consideration in the Final Action mailed September 14, 2005.

V.    **Summary of Claimed Subject Matter**

The present application relates to a gemstone evaluation system for providing a price estimate for a gemstone. The system of claim 1 recites an input device adapted to receive a gemstone laboratory grading certificate (page 6, line 7; page 9 lines 7-10) via a remote communication device (page 6, lines 18-24), the gemstone laboratory grading certificate including cut type, weight, color, clarity, and cut proportions (page 9 lines 10-13), a processing device adapted to compute a pricing estimate for use in an evaluation report (page 6, lines 10-15), based at least upon the data included on the gemstone laboratory grading certificate (page 9, lines 10-13), and an output device adapted to communicate the evaluation report to the system user (page 9, lines 13-15). Claim 1 also recites that the data for cut proportions include an objective measurable value for at least one of depth percentage, table percentage, girdle thickness, crown height, crown angle, pavilion depth, pavilion angle, culet amount, and type of finish (page 10, lines 23-25).

Claim 8 recites a gemstone evaluation system having an input device adapted to receive predetermined gemstone data descriptive of the physical characteristics of the gemstone to be evaluated, supplied by a system user, from a gemstone laboratory grading certificate (page 6, line 7; page 9 lines 7-10), the gemstone laboratory grading certificate including cut type, weight, color, clarity, and cut proportions (page 9 lines 10-13), a processing device adapted to compute a fair market pricing estimate for use in an evaluation report (page 6, lines 10-15), based at least upon the cut proportions (page 10, lines 16-25), and an output device adapted to communicate the evaluation report to the system user (page 10, lines 23-25).

Claim 15 defines the invention as a method of producing a gemstone evaluation report. Specifically, claim 15 recites receiving predetermined data describing a gemstone, descriptive of the physical characteristics of the gemstone to be evaluated, supplied by a system user (page 8, lines 32-33), from a gemstone laboratory grading certificate (page 9, lines 7-10), computing a fair market pricing estimate for the gemstone (page 9, lines 1-2), based at least on the received cut proportions (page 10, lines 16-25) and generating an evaluation report including the fair market pricing estimate (page 9, lines 2-4). Claim 15 also recites communicating the evaluation report to the system user (page 9, lines 4-6).

## VI.    Issues To Be Reviewed On Appeal

Whether the cited reference of Aggarwal discloses receiving gemstone laboratory grading certificate data or computing a pricing estimate based upon the data included on a gemstone laboratory grading certificate.

Whether Aggarwal (U.S. Patent No. 6,239,867) and Vanier et al. (U.S. Patent No. 5,828,405) discloses adjusting a pricing estimate based on a laboratory identifier from a gemstone laboratory grading certificate.

Whether Aggarwal Non-Provisional Application Serial No. 09/085,797 or U.S. Patent No. 6,239,867 is available as prior art against the pending claims.

Whether claims 1-18 and 20-22 comply with the written description requirement of 35 U.S.C. § 112, first paragraph.

## VII.    Argument

### A.    Aggarwal cannot anticipate any of the pending claims because Aggarwal fails to disclose gemstone data of a gemstone laboratory grading certificate.

Applicants respectfully submit that the rejection of claims 1-18 and 20-22 as anticipated by Aggarwal is improper and must be withdrawn. Each of claims 1-18 and 20-22 recites receiving data of a gemstone laboratory grading certificate and computing a pricing estimate based at least upon the data included on the gemstone laboratory grading certificate. Aggarwal does not disclose any data from a gemstone laboratory grading certificate or computing a pricing estimate based at least upon the data included on the gemstone laboratory grading certificate, and therefore Aggarwal cannot anticipate the pending claims.

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Generally, the claimed system and method receives a gemstone laboratory grading certificate and computes a pricing estimate based upon the data included on the certificate. In one embodiment, the data of the gemstone laboratory grading certificate is received by an input device and a pricing estimate is calculated based upon the data on the gemstone laboratory certificate. As discussed in the application, gemstone data produced by a laboratory, and embodied in a gemstone laboratory grading certificate, is variable and highly dependent on which laboratory performs the gemstone testing and issues the grading certificate. This variability may be caused by the subjective nature of existing gemstone measuring techniques. The variability makes it difficult for a gemstone buyer to determine an objective price estimate for a particular gemstone. The claimed system and method reduces the variability by adjusting an initial price for a gemstone to provide a more accurate price estimate of a gemstone under examination. This adjustment may be based on the parameters obtained from the grading certificate, which include the identity of the lab generating the gemstone grading certificate.

As provided in MPEP § 2131, "[t]o anticipate a claim, the reference must teach every element of the claim. 'A claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631; 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Because Aggarwal discloses a device that produces its own gemstone data independent of any laboratory, Aggarwal cannot disclose using data from a gemstone grading certificate. Therefore, Aggarwal cannot anticipate any of the pending claims.

Generally, Aggarwal discloses a method and apparatus for measuring gemstone features using a spectral analysis. Aggarwal teaches reducing subjective measurements of gemstone features by using a machine that produces consistent measurements for a single gemstone. By using the Aggarwal machine, a gemstone feature may be, to some degree, objectively measured. However, Aggarwal is deficient in disclosing gemstone data of a grading certificate that represents laboratory measurements using existing subjective measurement techniques. In fact, Aggarwal cannot use any data from grading certificates because Aggarwal teaches producing its own objective gemstone data that is unrelated to any particular laboratory. Thus, Aggarwal cannot teach adjusting subjective measurements of a laboratory grading certificate to product an objective price. The claimed system and method,

on the other hand, adjusts existing gemstone data from laboratory grading certificates to provide a more objective pricing estimate of the gemstone.

Moreover, while Aggarwal and the claimed system and method are both concerned with objectivity, Aggarwal requires the actual gemstone to produce measurements of the gemstone, which, while not specifically disclosed by Aggarwal, may eventually be used to price the gemstone. The claimed method and system, on the other hand, can take a grading certificate produced by any lab and generate an objective price estimate based on the data of the certificate (which includes laboratory identifying information) without the presence of a physical gemstone. In other words, Aggarwal solves the problem of subjective measurements by not taking any subjective measurements at all. Instead, Aggarwal addresses the problem of producing an objective measurement of a gemstone quality factor from the gemstone itself, whereas the claimed method and system produces an objective price estimate by adjusting existing subjective gemstone data.

Because Aggarwal fails to disclose receiving a gemstone laboratory grading certificate or computing a pricing estimate based at least upon the data included on a gemstone laboratory grading certificate, Aggarwal cannot anticipate the pending claims.

**B.      Neither Aggarwal nor Vanier can render the claims obvious because neither discloses or teaches adjusting a pricing estimate based on a jeweler pricing estimate or based on the identity of a laboratory or retail outlet.**

The rejection of claims 17 as obvious over Aggarwal in view of Vanier et al. (Vanier) must be withdrawn because none of the Office actions have established a proper *prima facie* case of obviousness. Claim 7 positively recites, in part, adjusting a price estimate based on a jeweler pricing adjustment or a laboratory identifier from a gemstone laboratory grading certificate. The Office actions acknowledged that Aggarwal does not disclose "adjusting price value based on jeweler pricing adjustment," and instead relies on Vanier to remedy the deficiency. However, Vanier also fails to disclose or teach adjusting a price based on a jeweler pricing adjustment.

As provided in MPEP § 2142, "[t]o establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, or to combine reference teachings. Second, there must be a

reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure." *In re Vaeck*, 947 F.2d 488, 20; USPQ2d 1438 (Fed. Cir. 1991); see also MPEP § 2143-2143.03 for decisions pertinent to each criteria. Because neither Aggarwal nor Vanier discloses or teaches adjusting a price based on a jeweler pricing adjustment, no combination of Aggarwal and Vanier can render the pending claims obvious.

Vanier generally discloses a gemstone identification device that measures an optical response of a gemstone that can be used to identify the gemstone. Vanier also discloses (at column 6, lines 40-66) that the identification data obtained for a particular gemstone may be associated with a jeweler's appraisal value for the gemstone and that the optical response of the gemstone and the jeweler's appraised value for the gemstone may be store in a national database that contains many such data. Vanier further discloses that a computer coupled to the national database can compare the appraised value of the gemstone with industry standards maintained by the database to determine if a value departs significantly from the industry standard. Vanier, however, fails to teach that the appraised value could be or should be adjusted based on a jeweler pricing adjustment.

The Office action asserts that "it would have been obvious to one of ordinary skill in the art at the time of the invention to appraise the gemstone according to jeweler price, from which the gemstone was purchased or sold, since different retail stores pay different price for the gemstones." However, this assertion still fails to assert that Vanier teaches adjusting a price estimate based on a jeweler pricing adjustment. Applicant does not deny that a price estimate may be based on a jeweler's appraised value. However, the claimed method and system recite adjusting a price estimate based on jeweler pricing adjustment, which is not disclosed or taught by Vanier.

The jeweler pricing adjustment recited by the pending claims is based on the identity of the jeweler. As discussed in the application, this jeweler pricing adjustment may be made to compensate for the differences in jeweler pricing habits to produce a more objective price estimate. The claimed method and system may adjust a price estimate based on a number of factors related to the identity of a jeweler. Vanier neither discloses or teaches such an adjustment. In fact, Vanier only teaches that data is available for comparison and that

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outliers from an industry standard may be flagged. At best, Vanier may teach storing data which may be used to adjust a price estimate, but Vanier does not teach using that data to adjust a price estimate. Instead, Vanier discloses using an industry standard to indicate whether an appraisal price is at the industry standard or departs from the industry standard. Comparison of prices is different from adjustment of a price, and thus, Vanier simply fails to teach using any data in its national database to adjust an initial price estimate.

The rejection of claims 21-22 as obvious over Aggarwal in view of Vanier must be withdrawn because none of the Office actions have established a proper *prima facie* case of obviousness. Claims 21-22 positively recite, in part, adjusting a price estimate based on a laboratory identifier from a gemstone laboratory grading certificate or a retail outlet identifier. The Office actions acknowledged that Aggarwal does not disclose "adjust[ing] the pricing estimate based on a laboratory identifier or retail outlet identifiers," and instead relies on Vanier to remedy the deficiency. However, Vanier also fails to disclose or teach adjusting a price based on a laboratory identifier or retail outlet identifier.

As discussed above in regards to claim 17, Vanier fails to disclose adjusting a price value or price estimate. While Vanier discloses using its "database of appraised values and characteristics of the gemstones …to reflect any increased value of the gemstones over time," this "reflection" is specific to gemstone type over time, and not to the identity of a gemstone laboratory or retail outlet. Specifically, the statement merely teaches consideration of a change over a period of time in a standard value for a gemstone type, as illustrated in col. 6, line 66 – col. 7, line 3, which states that "upon renewal of a policy, it may be appropriate to consider whether the appraised value should have risen, for example, if that particular gemstone type has increased substantially in value." At best, Vanier teaches consideration of the accuracy of an estimate of a gemstone based on a market rise in the value of a gemstone characteristic or type. However, this is different from teaching an adjustment and even if this disclosure did teach an adjustment (which Applicant submits that it does not) this adjustment is unrelated to a particular retail outlet or laboratory, and thus, still fails to anticipate pending claims 21-22.

Claims 3 and 10 are rejected as obvious over Aggarwal in view of Vanier et al. (Vanier). As discussed above, Aggarwal does not disclose obtaining any data from a gemstone laboratory grading certificate or computing a pricing estimate based at least upon the data included on a gemstone laboratory grading certificate. For similar reasons as

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Aggarwal, Vanier also fails to teach using a gemstone laboratory grading certificate. Specifically, Vanier discloses a device for measuring an optical response of a gemstone for identifying the gemstone. The data disclosed by Vanier is directly produced by its own machine independent of any laboratory. Therefore no grading certificate is used by the Vanier process or device. It follows that because neither Aggarwal nor Vanier discloses or teaches data from a gemstone laboratory grading certificate, no combination of Aggarwal and Vanier can render claims 3 and 10 obvious.

**C.     The Aggarwal Non-Provisional And Aggarwal Patent are not available as prior art because the provisional application from which Aggarwal claims priority to does not support the subject matter relied upon to reject the pending claims.**

The Aggarwal non-provisional Application Serial No. 09/085,797 and Aggarwal U.S Patent No. 6,239,867, which resulted from a continuation application of the 09/085,797 application, are not available as a prior art reference because the subject matter of 09/085,797 and 6,239,867 relied upon by the Office actions to reject the pending claims have an effective prior art date of May 28, 1998, and the Applicant has sworn behind this date in a previous Rule 131 declaration.

The chronology of the Aggarwal applications and patent are as follows:

Aggarwal Provisional Application filed December 18, 1997;
Aggarwal Non-Provisional Application No. 09/085,797 filed May 28, 1998; and
Aggarwal Continuation Application No. 09/455,643 filed December 7, 1999, which
    issued as U.S. Patent No. 6,239,867 on May 29, 2001.

The Aggarwal provisional application (No. 09/085,797) does not contain support for the subject matter in the Aggarwal non-provisional (Application Serial No. 09/085,797) or Aggarwal patent (U.S. Patent No. 6,239,867) that is relied upon by the Office actions to reject the pending claims, as required by 35 U.S.C. §112, first paragraph. See, MPEP § 2136.03 IV, ("Filing Date Of U.S. Patent Application Can Only Be Used As The 35 U.S.C. § 102(E) Date If It Supports The Claims Of The Issued Child"). See also, *In re Wertheim*, 646 F.2d 527, 537 (CCPA 1981):

If, for example, the PTO wishes to utilize against an applicant a part of that patent disclosure found in an application filed earlier than the date of the application which

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became the patent, it must demonstrate that the earlier-filed application contains §§ 120/112 support for the invention claimed in the reference patent.

Because the Aggarwal provisional application does not support the relied upon sections of either the Aggarwal non-provisional application (09/085,797) or Aggarwal patent (6,239,867), the earliest filing date that can be afforded the Aggarwal non-provisional application and Aggarwal patent to anticipate an application claim is May 28, 1998.

Specifically, the Office actions rely on Aggarwal column 16, lines 28-38 to disclose associating a price range with the characteristics of analyzed gemstones. It is this disclosure that the Office action asserts against claims 1, 8 and 15 for disclosing computing a pricing estimate for use in an evaluation report based upon data on the gemstone laboratory grading certificate, such as cut proportions. The Aggarwal provisional (60/068,033) fails to include this paragraph or otherwise support this disclosure. Moreover, the Aggarwal provisional fails to disclose, in any manner, computing a pricing estimate. While the Aggarwal provisional mentions the phrase "monetary value" and "aesthetic value" when discussing evaluation of gemstone qualities, the Aggarwal provisional only describes determining gemstone quality factors, such as color, clarity, cut shape, brilliance, etc. Moreover, while these features may be related to the monetary value of a gemstone, the Aggarwal provisional fails to specifically disclose computing a price estimate.

The only disclosure of price determination is made in the Aggarwal patent filed on May 29, 1998, and its continuation application filed May 29, 2001. In regards to this disclosure, a declaration by Applicant Peter J. Malnekoff pursuant to 37 C.F.R. § 1.131 ("the Rule 131 Declaration") was filed on August 26, 2003. The Rule 131 Declaration demonstrates that the invention claimed in this application was conceived by Mr. Malnekoff prior to May 28, 1998, and that Mr. Malnekoff was reasonably diligent in reducing the invention to practice. In the Office action dated November 18, 2003, the examiner indicated that the Rule 131 declaration "has been considered but is ineffective to overcome the Aggarwal reference," and the Examiner persists in citing the Aggarwal patent in the claim rejections.

Applicant again respectfully, but vehemently, points out that this disclosure material relied upon by the Examiner from the Aggarwal patent is entirely absent from the Aggarwal provisional patent application. Moreover, the Aggarwal provisional application does not disclose or suggest a processing device adapted to compute a pricing estimate for use in an

evaluation report based upon gemstone data received. Accordingly, the effective date of such teachings of the Aggarwal patent do not extend back to the filing date of the Aggarwal provisional application (December 18, 1997), but instead only are entitled to an effective date of May 28, 1998, the filing date of the nonprovisional application from which the Aggarwal reference is a continuation. Accordingly, the Aggarwal patent is not entitled to be used as prior art over the present application.

The Office actions states "The examiner believes all dependent claim features not specifically discussed above are expressly or inherently taught by Shang." If the Examiner is alleging the claims are inherent in the Shang provisional, then MPEP 2112.IV specifically places the burden on the Examiner to provide a rationale or evidence tending to show inherency. No rationale or evidence has been provided. The Office action has not met its burden to make a prima facie case of anticipation.

**D.     Claims 1-18 and 20-22 comply with the written description requirement of 35 U.S.C. 112, first paragraph.**

As provided in MPEP § 2163(I), "[t]o satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention." See, e.g., *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003); *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d at 1563, 19 USPQ2d at 1116.

Claim 1 recites "an input device adapted to receive a gemstone laboratory grading certificate via a remote communication device." The Office action asserts that a gemstone laboratory grading certificate is considered new matter because the specification does not teach an input device receiving the gemstone laboratory grading certificate via a remote communication device. Applicants respectfully traverse the rejection because Figure 2 and the corresponding specification at page 6, lines 15 – page 7, line 27 support receiving a gemstone laboratory grading certificate via a remote communication device. In one embodiment, the remote communication system 18 of Fig. 2 is described as a shared public network such as the Internet (See page 6, lines 24-27). Moreover, the specification describes that processing device 14 may be in communication with a number of potential users, or devices, over the remote communication system 18 (See page 7, lines 24-27). Thus, as known by those skilled in the art, the claimed input device may have multiple connections to a network such as the Internet, where the Internet comprises a plurality of different users and

devices. Accordingly, a laboratory grading certificate may be received at any number of connections to the network and received by the input device for eventual communication to the processing device 14, again via the network or remote communication system. Thus, the specification supports that an input device may receive a gemstone laboratory grading certificate via a remote communication device.

The Office action further asserts that the specification discloses "gemstone data received from a user, being typed by the user" and that the specification discloses "receiving data contained on the various lab certificates associated with gemstone or which provides specific information about each gemstone," and, therefore, that "the specification does not teach receiving a certificate." The specification discloses that the "data received corresponds to the data contained on the various lab certificates typically associated with each gemstone," and that "the information would preferably be typed using a keyboard into the fields of an input screen." As known by those skilled in the art, a gemstone laboratory grading certificate may be inputted into a computer system in any number of ways. While one embodiment involves typing the certificate into an input device, the same input device may represent a scanner enters the certificate. One skilled in the art would recognize that the gemstone laboratory grading certificate represents data and that this data may be entered using the input device in a number of ways. Thus, the specification fully discloses and supports that language of claim 1 and claims 2-7 depending therefrom.

Claim 8, which is listed as rejected but not addressed by the final Office action fully complies with the written description requirement of 35 U.S.C. 112, first paragraph. Specifically, claim 8 recites an input device adapted to receive predetermined gemstone data from a laboratory grading certificate. While Applicants submit that the language of receiving a laboratory grading certificate is supported, receiving gemstone data from a laboratory grading certificate is explicitly described on page 9, lines 7-16. Therefore, the rejection of claim 8, and claims 9-18 and 21 depending thereform, is improper.

Claim 20 complies with the written description of 35 U.S.C. 112, first paragraph. The final Office action asserts that the specification does not "disclose allowing a user to modify a value of any of the physical characteristics of the gemstone and adjusting the fair market pricing estimate based on the modified value," and thus considers this element new matter. The Figure 5 and the specification at page 9, lines 24-26 and page 9, line 3 – page 10, line 1 discusses that a baseline price estimate is determined based on physical characteristics.

Adjustments to this baseline estimate is disclosed at least on page 9, lines 24-26; page 10 lines 3-8; page 10 lines 21-25. The determination of the baseline price and the adjustment can be performed automatically by a computer, as summarized on page 13, lines 13-17 and Fig. 2. Claim 20 recites changing the value of a physical characteristic and adjusting a first price estimate based on the modified value. This is fully supported by the text as one skilled in the art recognizes that any changes in the input parameters can automatically cause a corresponding adjustment at the output of the system. Thus, changes to a physical characteristic value will effect the output of an automated process. Therefore, allowing a user to modify a value of any of the physical characteristics of the gemstone and adjusting the fair market pricing estimate based on the modified value is disclosed by the specification.

**Conclusion**

In view of the foregoing remarks, it is respectfully submitted that each of claims 1–18 and 20-22 is patentable over the prior art, and that all of the pending claims should be allowed.

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN LLP
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
312-474-6300

By:  _____
William J. Kramer
Registration No. 46,229
Attorney for Applicants

September 13, 2006

## APPENDIX A

### Claims Involved in the Appeal of Application Serial No. 09/871,867

1.    (Previously Presented)    A fully automated gemstone evaluation system for which presence of the actual gemstone is not required, comprising:

an input device adapted to receive a gemstone laboratory grading certificate via a remote communication device the gemstone laboratory grading certificate including cut type, weight, color, clarity, and cut proportions wherein the data for cut proportions include an objective measurable value for at least one of depth percentage, table percentage, girdle thickness, crown height, crown angle, pavilion depth, pavilion angle, culet amount, and type of finish;

a processing device adapted to compute a pricing estimate for use in an evaluation report, based at least upon the data included on the gemstone laboratory grading certificate; and

an output device adapted to communicate the evaluation report to the system user.

2.    (original)    The automated gemstone evaluation system according to claim 1, wherein said evaluation report further includes a summary description of the qualities of the gemstone.

3.    (original)    The automated gemstone evaluation system according to claim 1, wherein said pricing estimate includes a separate price estimate for each of a plurality of different types of retail outlets.

4.      (original)      The automated gemstone evaluation system according to claim 1, further comprising a remote communication section, allowing for the gemstone data to be received from an input device located remotely, and allowing for the evaluation report to be communicated to an output device located remotely.

5.      (original)      The automated gemstone evaluation system according to claim 1, wherein said output device includes a printer for printing the evaluation report.

6.      (original)      The automated gemstone evaluation system according to claim 1, wherein said output device includes a display screen for displaying the evaluation report.

7.      (original)      The automated gemstone evaluation system according to claim 1, wherein the system user is a consumer.

8.      (previously presented)      A fully automated gemstone evaluation system for which the presence of the actual gemstone is not required, comprising:

an input device adapted to receive predetermined gemstone data descriptive of the physical characteristics of the gemstone to be evaluated, supplied by a system user, from a gemstone laboratory grading certificate without having the gemstone be physically present to any part of the gemstone evaluation system, the gemstone data including cut type, weight, color, clarity, and cut proportions;

a processing device adapted to compute a fair market pricing estimate for use in an evaluation report, based at least upon the cut proportions; and

an output device adapted to communicate the evaluation report to the system user.

9.     (original)     The automated gemstone evaluation system according to claim 8, wherein said evaluation report further includes a summary description of the qualities of the gemstone.

10.     (original)     The automated gemstone evaluation system according to claim 8, wherein said pricing estimate includes a separate price estimate for each of a plurality of different types of retail outlets.

11.     (original)     The automated gemstone evaluation system according to claim 8, further comprising a remote communication section, allowing for the gemstone data to be received from an input device located remotely, and allowing for the evaluation report to be communicated to an output device located remotely.

12.     (original)     The automated gemstone evaluation system according to claim 8, wherein said output device includes a printer for printing the evaluation report.

13.     (original)     The automated gemstone evaluation system according to claim 8, wherein said output device includes a display screen for displaying the evaluation report.

14.     (original)     The automated gemstone evaluation system according to claim 8, wherein the system user is a consumer.

15.    (previously presented)         A computerized method of producing a

gemstone evaluation report, without the presence of the actual gemstone being required, said

method comprising the steps of:

receiving predetermined data describing a gemstone, descriptive of the physical

characteristics of the gemstone to be evaluated, supplied by a system user, from a gemstone

laboratory grading certificate including cut type, weight, color, clarity, and cut proportions;

computing a fair market pricing estimate for the gemstone, based at least on the

received cut proportions;

generating an evaluation report including the fair market pricing estimate; and

communicating the evaluation report to the system user.


16.    (previously presented)         The method of claim 15, wherein said step of

computing a fair market pricing estimate for the gemstone includes:

computing an adjustment factor, based at least on the cut proportions of the gemstone;

and

generating the fair market pricing estimate from a baseline price estimate and the

computed adjustment factor.


17.    (previously presented)         The method of claim 16, further comprising

determining the baseline price estimate including:

indexing a data structure, based on the cut style, weight, color and clarity of the

gemstone;

reading an indexed list price value stored in the data structure; and

adjusting the indexed list price value based on a jeweler pricing adjustment for generating said baseline price estimate.

18.     (previously presented)        The method of claim 15, wherein said step of communicating the evaluation report to the user includes at least one of the steps of:

printing the evaluation report on a printer; and

displaying the evaluation report on a display screen.

19.     (Canceled)

20.     (previously presented)        The method of claim 15, further comprising:

allowing a user to modify a value of any of the physical characteristics of the gemstone; and

adjusting the fair market pricing estimate based on the modified value of the any of the physical characteristics of the gemstone.

21.     (previously presented)        The automated gemstone evaluation system according to claim 8, wherein the processing device is further adapted to adjust the pricing estimate based on a laboratory identifier from the gemstone laboratory grading certificate.

22.     (previously presented)        The automated gemstone evaluation system according to claim 8, wherein the processing device is further adapted to generate a set of retail price estimates by adjusting the pricing estimate by a set of retail outlet identifiers.

## Evidence Appendix

No evidence is submitted pursuant to 37 CFR § 1.130, 1.131 or 1.132.

## Related Proceedings Appendix

There are no related proceedings.